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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/301,043	04/28/99	COOK	C 14090/40006

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EXAMINER

RIVELL, J

ART UNIT

PAPER NUMBER

3753

DATE MAILED: 02/06/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/301,043

Applicant(s)

COOK ET AL.

Examiner

John Rivell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/8/00 (amendment).
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 29-32 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-17 is/are allowed.
- 6) ☒ Claim(s) 1-8, 18-22 and 25-28 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☒ Other: APPENDIX.

This application was originally filed with claims numbered 1-17 and 20-34. There were no claims numbered 18 or 19. The Office Action of July, 6 2000, identified this feature and referred to all claims in that action as they were originally numbered i.e. 1-17 and 20-34.

By amendment filed November 8, 2000 applicant has introduced a claim numbered "18" thus invoking 37 CFR 1.126 wherein the Office renumbers claims in order from 1 to x, as presented. As such there is currently a claim numbering problem in claims rewritten (amended as in the amendment of 11/8/00) and this problem concerns originally numbered claims 20-34 now numbered as claims 18-32, respectively. Note the attached four (4) sheets of claims marked as APPENDIX now showing claims as renumbered 18-28 and amended claims 18, 25 and 30.

No claims have been canceled.

Claims 29-32 (originally 31-34) remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 4.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 6 are rejected under 35 U.S.C. 102 (b) as being anticipated by Sleasman et al. In Sleasman et al. there is disclosed a plastics sewerage basin having

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a pump 38 including a cylindrical wall at 52 having an open top closed by lid assembly 22 and a closed bottom at wall 31. Lower end includes an "annular collar" read at 15. Once all the individual pieces are attached together the unit is "one piece" as claimed. The recitation "one piece molded", as claimed and argued is clearly drawn the method of manufacturing the apparatus which traditionally is given no patentable weight in determining the patentability of an apparatus claim. An inlet opening is shown at 20. "A nub" is read at pipe section 66. "Annular ribs" are read at the corrugations 54.

Regarding applicants remarks concerning Sleasman et al. the argument that applicants device takes advantage in being capable of being blow molded is moot. A method of manufacture is not now being claimed and in fact has been restricted from prosecution. It is also clear that the recitation "one piece molded" as claimed and argued is intended to invoke a method of manufacture which method is traditionally given no patentable weight in determining patentability of apparatus claims as previously set forth.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order

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for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sleasman et al. The patent to Sleasman et al. discloses the claimed features with the exception of having the lower section wall generally downwardly tapered and the upper section upwardly tapered. However, to employ tapered walls as recited in the locations cited in Sleasman et al. is considered to be an obvious design expedient over these features as disclosed in Sleasman et al. relating to the desired shape of the basin which provide no new and/or unexpected results nor solves any stated problem.

Regarding applicants remarks concerning the above, applicants again assert method of manufacturing arguments that are moot. In addition applicant alleges that tapered walls cannot be made by the methods disclosed by Sleasman et al. The final method of manufacture of the final apparatus of either applicants device or Sleasman et al. is not in dispute or under prosecution. Such tapered walls could be constructed after extrusion by heating the pieces and stretching the open such that the walls taper toward to closed end. Such would render "tapered" walls on both halves of the device prior to joining.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sleasman et al. in view of Sidaway et al. The patent to Sleasman et al. discloses all the claimed features with the exception of having the "nub" extend from a flat surface of the basin. The patent to Sidaway et al. discloses that it is known in the art to employ a flat surface at 32 from which extends "nub" or pipe section 36 for the purpose of providing proper structural support for the extending pipe section. It would have been obvious at the time

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the invention was made to a person having ordinary skill in the art to employ in Sleasman et al. a flat surface at gasket 27 from which "nub" 66 extends for the purpose of providing proper structural support for the extending pipe section as recognized by Sidaway et al.

Regarding applicants arguments concerning the above, once all the pieces are "joined" as disclosed by Sleasman et al., the device is in fact "one piece" and the recitation "molded" clearly invokes a method of manufacturing step which is traditionally given no patentable weight in determining patentability of apparatus claims as previously set forth.

Claims 18-22 (originally 20-24), 25 (originally 27) and 26 (originally 28) are rejected under 35 U.S.C. 103(a) as being unpatentable over Sleasman et al. in view of Hoffman. The patent to Sleasman et al. discloses all the claimed features with the exception of having an annular flat upper surface inside of which fits the upper lid assembly 22. The patent to Hoffman discloses that it is known in the art to employ an annular upper surface 38 inside of which is to be located an attached lid or cover (column 3, lines 34-37) for the purpose of providing a flush fit of the cover and the upper section of the sewer basin. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Sleasman et al. an upper annular surface into which fits the upper lid or cover assembly 22 for the purpose of providing a flush fit of the cover to the basin as recognized by Hoffman. Regarding claim 19 (21) the device of Sleasman et al. is "'molded from a resin". Thus the device of the combination would be "molded from a resin". Regarding claim 20 (22) the raised

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annular edge of Hoffman is as thick as the top cover. Regarding claim 21 (23) the raised annular edge of Hoffman at 38 is believed to be shown of a diameter corresponding to the outer wall of the container 14 as well as being greater than the diameter of the top cover in order to accept the top cover as disclosed in column 3.

Regarding applicants arguments concerning the above, the "raised annular edge circumferentially surrounding the flat annular region and the outer edges of the top cover when engaged with the base and body" is believed to be shown in Hoffman at recess 38, in upper flange 16, in which recess an unillustrated but disclosed top cover would dwell.

Claim 27 (originally 29) is rejected under 35 U.S.C. 103(a) as being unpatentable over Sleasman et al. in view of Hoffman as applied to claims 18-22, 25 and 26 above, further in view of Sidaway et al. as applied to claim 5 above.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is believed that the reference to Hoffman fairly illustrates an annular recess to accommodate a top cover as disclosed in column 3 of Hoffman. It is also believed that Sidaway et al. discloses that it is known in the art to employ a flat surface at 32 from which extends

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"nub" or pipe section 36 for the purpose of providing proper structural support for the extending pipe section as noted above. Each of these teachings are believed properly culled from the references for the reasons set forth.

Claims 10-17 are allowed. The claim numbered "25" in the amendment of 11/8/00 is allowed. The claim numbered "30" in the amendment of 11/8/00 is allowed.

Currently numbered claim 23 (originally 25) appears to be a duplicate of the above indicated amend claim "25". Currently numbered claim 28 (originally 30) appears to be a duplicate of the above indicated amended claim "30".

This application contains claims 29-32 (originally claims 31-34) drawn to an invention nonelected with traverse in Paper No. 4. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Rivell whose telephone number is (703) 308-2599. The examiner can normally be reached on Mon.-Thur. from 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Buiz can be reached on (703) 308-0871. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7765 for regular communications and (703) 308-7765 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

j.r.
02/01/01

A handwritten signature in black ink, appearing to read "John Rivell". The signature is stylized with a large, looped "J" and a cursive "Rivell".

John Rivell
Primary Examiner
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APPENDIX

- 5 a basin body comprising a generally cylindrical wall including an inner wall surface and an outer wall surface, and an integral closed bottom at a bottom portion of the cylindrical wall, the cylindrical wall terminating at a top portion of the basin body to define an open top;

wherein diametrically opposed recesses are formed in the outer wall surface near a top portion thereof, the recesses facilitating handling of the basin during transport and installation.

11. The basin of Claim 10, wherein the recesses project inwardly from the outer wall surface by at least 1.5 inches.

12. The basin of Claim 10, wherein the generally cylindrical wall includes an inlet opening.

13. The basin of Claim 12, wherein the inlet opening is formed in an integral nub projecting from the outer surface of the generally cylindrical wall for connection to a sewage source line.

14. The basin of Claim 13, wherein the nub projects from a flat in the generally cylindrical wall outer surface.

15. The basin of Claim 10, wherein the basin body comprises integral annular ribs projecting from the outer wall surface.

16. The basin of Claim 10, wherein a lower section of the generally cylindrical wall is downwardly tapered.

17. The basin of Claim 16, wherein an upper section of the generally cylindrical wall is upwardly tapered.

18. A sewage ejector assembly comprising:

5 a basin for receiving sewage comprising a basin body, the basin body comprising a generally cylindrical wall including an inner wall surface and an outer wall surface and including annular ribs projecting from the outer wall surface, and an integral closed bottom at a bottom portion of the cylindrical wall, the cylindrical wall terminating at a top portion of the basin body to define an open top, a top portion of the generally cylindrical wall including a flat annular region the basin body; and

NOT Allowed

10 a top cover for covering the open top of the basin, an outer
lower edge surface of the top cover being sealingly engageable with
the flat annular region of the basin, the basin body further comprising
a raised annular edge circumferentially surrounding the flat annular
region and outer edges of the top cover when engaged with the basin
15 body.

15 body.

21. The assembly of Claim 20, wherein the raised annular edge and the basin body are integrally molded from a resin.

22. The assembly of Claim 20, wherein the raised annular edge has a height at least as great as a thickness of the top cover.

23. The assembly of Claim 22, wherein the raised annular edge has an outer surface with a diameter corresponding to a diameter of the outer wall surface at the top portion of the basin body, and an inner surface with a diameter greater than an outer diameter of the top cover.

24. The assembly of Claim 20, further comprising a pump mounted in an interior of the basin.

— ○ 25. The assembly of Claim 20, wherein the top cover includes an outlet opening therein.

26. The assembly of Claim 25, further comprising an outlet pipe for connection to a sewer line, the outlet pipe extending from a pump mounted in an interior of the basin and through the outlet opening in the top cover.

27. The assembly of claim 20, wherein the generally cylindrical wall includes an inlet opening.

28. The assembly of Claim 27, wherein the inlet opening is formed in a nub projecting from the outer surface of the generally cylindrical wall for connection to a sewage source line.

29. The assembly of Claim 28, wherein the nub projects from a flat in the generally cylindrical wall outer surface.

30. The assembly of Claim 20, wherein an integral annular collar projects from the outer wall surface at a bottom portion thereof